

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 16 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KENNETH D. PHELON and JOLICIA
KELLEY,

Plaintiffs - Appellants,

v.

JEREMY D. HAMMAN, Alameda
County, Sheriff Deputy; et al.,

Defendants - Appellees.

No. 11-15351

D.C. No. 4:09-cv-03393-SBA
Northern District of California,
Oakland

ORDER

Before: RYMER and CALLAHAN, Circuit Judges.

Appellants' motions to proceed in forma pauperis and for appointment of counsel are denied because we find that the appeal is frivolous. Within 21 days after the date of this order, appellants shall pay \$455.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Failure to pay the fees will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute, regardless of further filings. *See* 9th Cir. R. 42-1.

No motions for reconsideration, clarification, or modification of the denial of appellants' in forma pauperis status shall be filed or entertained.

If appellants pay the fees as required and file proof of such payment in this court, appellants shall simultaneously show cause why the judgment challenged in this appeal should not be summarily affirmed. *See* 9th Cir. R. 3-6. If appellants elect to show cause, a response may be filed within 10 days after service of appellant's filing. If appellants pays the fees but fail to file a response to this order, the Clerk shall dismiss this appeal for failure to prosecute. *See* 9th Cir. R. 42-1.

If the appeal is dismissed for failure to comply with this order, the Clerk shall not file or entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees and a response to the order to show cause.

Briefing is suspended pending further order of this court.